

Article 3.

Franchise Tax.

§ 105-114. Nature of taxes; definitions.

(a) Repealed by Session Laws 2017-204, s. 1.1, effective August 11, 2017.

(a1) Scope. – The tax levied in this Article upon corporations is a privilege tax levied upon:

- (1) Corporations organized under the laws of this State for the existence of the corporate rights and privileges granted by their charters, and the enjoyment, under the protection of the laws of this State, of the powers, rights, privileges and immunities derived from the State by the form of such existence; and
- (2) Corporations not organized under the laws of this State for doing business in this State and for the benefit and protection which these corporations receive from the government and laws of this State in doing business in this State.

(a2) Condition for Doing Business. – If the corporation is organized under the laws of this State, the payment of the tax levied by this Article is a condition precedent to the right to continue in the corporate form of organization. If the corporation is not organized under the laws of this State, payment of this tax is a condition precedent to the right to continue to engage in doing business in this State.

(a3) Tax Year. – The tax levied in this Article is for the income year of the corporation in which the taxes become due.

(a4) No Double Taxation. – G.S. 105-122 does not apply to holding companies taxed under G.S. 105-120.2.

(b) Definitions. – The following definitions apply in this Article:

(1) City. – Defined in G.S. 105-228.90.

(1a) Code. – Defined in G.S. 105-228.90.

(2) Corporation. – A domestic corporation, a foreign corporation, an electric membership corporation organized under Chapter 117 of the General Statutes or doing business in this State, or an association that is organized for pecuniary gain, has capital stock represented by shares, whether with or without par value, and has privileges not possessed by individuals or partnerships. The term includes a mutual or capital stock savings and loan association or building and loan association chartered under the laws of any state or of the United States. The term includes a limited liability company or a partnership that elects to be taxed as a corporation under the Code, but does not otherwise include a limited liability company or a partnership.

(3) Doing business. – Each and every act, power, or privilege exercised or enjoyed in this State, as an incident to, or by virtue of the powers and privileges granted by the laws of this State.

(4) Income year. – Defined in G.S. 105-130.2(10).

(5) **(Effective for taxable years beginning on or after January 1, 2017, and applicable to the calculation of franchise tax reported on the 2016 and later corporate income tax return)** Total assets. – The sum of all cash, investments, furniture, fixtures, equipment, receivables, intangibles, and any other items of value owned by a person or a business entity.

(c) Recodified as G.S. 105-114.1 by Session Laws 2002-126, s. 30G.2(b), effective January 1, 2003. (1939, c. 158, s. 201; 1943, c. 400, s. 3; 1945, c. 708, s. 3; 1965, c. 287, s. 16; 1967, c. 286; 1969, c. 541, s. 6; 1973, c. 1287, s. 3; 1983, c. 713, s. 66; 1985, c. 656, s. 7; 1985

(Reg. Sess., 1986), c. 853, s. 1; 1987, c. 778, s. 1; 1987 (Reg. Sess., 1988), c. 1015, s. 2; 1989, c. 36, s. 2; 1989 (Reg. Sess., 1990), c. 981, s. 2; 1991, c. 30, s. 2; c. 689, s. 250; 1991 (Reg. Sess., 1992), c. 922, s. 3; 1993, c. 12, s. 4; c. 354, s. 11; c. 485, s. 5; 1997-118, s. 4; 1998-98, ss. 60, 76; 1999-337, s. 20; 2000-173, s. 8; 2001-327, s. 2(b); 2002-126, s. 30G.2(b); 2005-435, s. 59.2(a); 2006-66, s. 24A.2(a); 2006-162, ss. 3(b), 22; 2008-107, s. 28.7(a); 2014-3, ss. 14.1, 14.26; 2015-6, s. 2.3; 2015-241, s. 32.15(a); 2016-5, s. 1.7(a); 2017-204, s. 1.1; 2018-5, s. 38.2(a).)

§ 105-114.1. Limited liability companies.

(a) Definitions. – The following definitions apply in this section:

- (1) Affiliated group. – Defined in section 1504 of the Code.
- (2) Capital interest. – The right under a limited liability company's governing law to receive a percentage of the company's assets upon dissolution after payments to creditors.
- (3) Entity. – A person that is not a human being.
- (4) Governing law. – The law under which a limited liability company is organized.
- (5) Noncorporate limited liability company. – A limited liability company that does not elect to be taxed as a corporation under the Code.

(b) **(Effective for taxable years beginning before January 1, 2017)** Controlled Companies. – If a corporation or an affiliated group of corporations owns more than fifty percent (50%) of the capital interests in a noncorporate limited liability company, the corporation or group of corporations must include in its three tax bases pursuant to G.S. 105-122 the same percentage of (i) the noncorporate limited liability company's capital stock, surplus, and undivided profits; (ii) fifty-five percent (55%) of the noncorporate limited liability company's appraised ad valorem tax value of property; and (iii) the noncorporate limited liability company's actual investment in tangible property in this State, as appropriate.

(b) **(Effective for taxable years beginning on or after January 1, 2017, and applicable to the calculation of franchise tax reported on the 2016 and later corporate income tax return)** Controlled Companies. – If a corporation or an affiliated group of corporations owns more than fifty percent (50%) of the capital interests in a noncorporate limited liability company, the corporation or group of corporations must include in its three tax bases pursuant to G.S. 105-122 the same percentage of (i) the noncorporate limited liability company's net worth; (ii) fifty-five percent (55%) of the noncorporate limited liability company's appraised ad valorem tax value of property; and (iii) the noncorporate limited liability company's actual investment in tangible property in this State, as appropriate.

(c) Constructive Ownership. – Ownership of the capital interests in a noncorporate limited liability company is determined by reference to the constructive ownership rules for partnerships, estates, and trusts in section 318(a)(2)(A) and (B) of the Code with the following modifications:

- (1) The term "capital interest" is substituted for "stock" each place it appears.
- (2) A noncorporate limited liability company and any noncorporate entity other than a partnership, estate, or trust is treated as a partnership.
- (3) The operating rule of section 318(a)(5) of the Code applies without regard to section 318(a)(5)(C).

(d) **(Effective for taxable years beginning before January 1, 2017)** No Double Inclusion. – If a corporation is required to include a percentage of a noncorporate limited liability company's assets in its tax bases under this Article pursuant to subsection (b) of this section, its

investment in the noncorporate limited liability company is not included in its computation of capital stock base under G.S. 105-122(b).

(d) **(Effective for taxable years beginning on or after January 1, 2017, and applicable to the calculation of franchise tax reported on the 2016 and later corporate income tax return)** No Double Inclusion. – If a corporation is required to include a percentage of a noncorporate limited liability company's assets in its tax bases under this Article pursuant to subsection (b) of this section, its investment in the noncorporate limited liability company is not included in its computation of net worth base under G.S. 105-122(b).

(e) Affiliated Group. – If the owner of the capital interests in a noncorporate limited liability company is an affiliated group of corporations, the percentage to be included pursuant to subsection (b) of this section by each group member that is doing business in this State is determined by multiplying the capital interests in the noncorporate limited liability company owned by the affiliated group by a fraction. The numerator of the fraction is the capital interests in the noncorporate limited liability company owned by the group member, and the denominator of the fraction is the capital interests in the noncorporate limited liability company owned by all group members that are doing business in this State.

(f) Exemption. – This section does not apply to assets owned by a noncorporate limited liability company if the total book value of the noncorporate limited liability company's assets never exceeded one hundred fifty thousand dollars (\$150,000) during its taxable year.

(g) Timing. – Ownership of the capital interests in a noncorporate limited liability company is determined as of the last day of its taxable year. The adjustments pursuant to subsections (b) and (d) of this section must be made to the owner's next following return filed under this Article. If a noncorporate limited liability company and a corporation or an affiliated group of corporations have engaged in a pattern of transferring assets between them with the result that each did not own the capital interests on the last day of its taxable year, the ownership of the capital interests in the noncorporate limited liability company must be determined as of the last day of the corporation or group of corporations' taxable year.

(h) Penalty. – A taxpayer who, because of fraud with intent to evade tax, underpays the tax under this Article on assets attributable to it under this section is guilty of a Class H felony in accordance with G.S. 105-236(7). (2002-126, s. 30G.2(b); 2004-74, ss. 1, 2; 2004-170, s. 8.1; 2006-66, s. 24A.2(b); 2008-107, s. 28.7(b); 2013-157, s. 25; 2015-241, s. 32.15(e); 2016-5, s. 1.7(a).)

§ 105-115. Repealed by Session Laws 1989 (Reg. Sess., 1990), c. 1002, s. 1.

§ 105-116: Repealed by Session Laws 2013-316, s. 4.1(a), effective July 1, 2014, and applicable to gross receipts billed on or after that date.

§ 105-116.1: Repealed by Session Laws 2013-316, s. 4.1(a), effective July 1, 2014, and applicable to gross receipts billed on or after that date.

§§ 105-117 through 115-118: Repealed by Session Laws 1995 (Regular Session, 1996), c. 646, s. 3.

§ 105-119: Repealed by Session Laws 2000-173, s. 7.

§ 105-120: Repealed by Session Laws 2001-430, s. 12, effective January 1, 2002, and applies to taxable services reflected on bills dated on or after January 1, 2002.

§ 105-120.1: Repealed by Session Laws 2000-173, s. 7.

§ 105-120.2. Franchise or privilege tax on holding companies.

(a) **(Effective for taxable years beginning before January 1, 2017)** Every corporation, domestic and foreign, incorporated or, by an act, domesticated under the laws of this State or doing business in this State that, at the close of its taxable year, is a holding company as defined in subsection (c) of this section, shall, pursuant to the provisions of G.S. 105-122, do all of the following:

- (1) File a return.
- (2) Determine the total amount of its issued and outstanding capital stock, surplus and undivided profits.
- (3) Apportion such outstanding capital stock, surplus and undivided profits to this State.

(a) **(Effective for taxable years beginning on or after January 1, 2017, and applicable to the calculation of franchise tax reported on the 2016 and later corporate income tax return)** Every corporation, domestic and foreign, incorporated or, by an act, domesticated under the laws of this State or doing business in this State that, at the close of its taxable year, is a holding company as defined in subsection (c) of this section, shall, pursuant to the provisions of G.S. 105-122, do all of the following:

- (1) File a return.
 - (2) Determine the total amount of its net worth.
 - (3) Apportion its net worth to this State.
- (b) (1) **(Effective for taxable years beginning before January 1, 2017)** Every corporation taxed under this section shall annually pay to the Secretary of Revenue, at the time the return is due, a franchise or privilege tax at the rate of one dollar and fifty cents (\$1.50) per one thousand dollars (\$1,000) of the amount determined under subsection (a) of this section, but in no case shall the tax be more than seventy-five thousand dollars (\$75,000) nor less than thirty-five dollars (\$35.00).
- (2) Notwithstanding the provisions of subdivision (1) of this subsection, if the tax produced pursuant to application of this paragraph (2) exceeds the tax produced pursuant to application of subdivision (1), then the tax is levied at the rate of one dollar and fifty cents (\$1.50) per one thousand dollars (\$1,000) on the greater of the following:
- a. Fifty-five percent (55%) of the appraised value as determined for ad valorem taxation of all the real and tangible personal property in this State of each such corporation plus the total appraised value of intangible property returned for taxation of intangible personal property as computed under G.S. 105-122(d).
 - b. The total actual investment in tangible property in this State of such corporation as computed under G.S. 105-122(d).

(b) **(Effective for taxable years beginning on or after January 1, 2017, and applicable to the calculation of franchise tax reported on the 2016 and later corporate income tax**

return) Tax Rate. – Every corporation taxed under this section shall annually pay to the Secretary of Revenue, at the time the return is due, the greater of the following:

- (1) A franchise or privilege tax at the rate of one dollar and fifty cents (\$1.50) per one thousand dollars (\$1,000) of the amount determined under subsection (a) of this section, but in no case shall the tax be more than one hundred fifty thousand dollars (\$150,000) nor less than two hundred dollars (\$200.00).
- (2) If the tax calculated under this subdivision exceeds the tax calculated under subdivision (1) of this subsection, then the tax is levied at the rate of one dollar and fifty cents (\$1.50) per one thousand dollars (\$1,000) on the greater of the following:
 - a. Fifty-five percent (55%) of the appraised value as determined for ad valorem taxation of all the real and tangible personal property in this State of each such corporation plus the total appraised value of intangible property returned for taxation of intangible personal property as computed under G.S. 105-122(d).
 - b. The total actual investment in tangible property in this State of such corporation as computed under G.S. 105-122(d).
- (c) For purposes of this section, a "holding company" is a corporation that satisfies at least one of the following conditions:
 - (1) It has no assets other than ownership interests in corporations in which it owns, directly or indirectly, more than fifty percent (50%) of the outstanding voting stock or voting capital interests.
 - (2) It receives during its taxable year more than eighty percent (80%) of its gross income from corporations in which it owns directly or indirectly more than fifty percent (50%) of the outstanding voting stock, voting capital interests, or ownership interests.
- (d) Repealed by Session Laws 1985, c. 656, s. 39.
- (e) Counties, cities and towns shall not levy a franchise tax on corporations taxed under this section. The tax imposed under the provisions of G.S. 105-122 shall not apply to businesses taxed under the provisions of this section.
- (f) Repealed by Session Laws 2011-330, s. 3, effective June 27, 2011. (1975, c. 130, s. 1; 1985, c. 656, s. 39; 1985 (Reg. Sess., 1986), c. 854, s. 1; 1987 (Reg. Sess., 1988), c. 882, s. 4.2; 1991, c. 30, s. 4; 1998-98, s. 72; 2006-196, s. 9; 2011-330, s. 3; 2012-79, s. 2.3; 2013-414, s. 1(b); 2015-241, s. 32.15(b); 2016-5, s. 1.7(a); 2017-204, s. 1.2.)

§ 105-121: Repealed by Session Laws 1945, c. 752, s. 1.

§ 105-121.1. (Repealed effective for taxes due on or after April 1, 2017) Mutual burial associations.

An annual franchise or privilege tax on all domestic mutual burial associations shall be due and payable to the Secretary of Revenue on or before the first day of April of each year. The amount of this franchise or privilege tax shall be based on the membership of such associations according to the following schedule:

Membership less than 3,000	\$15.00
Membership of 3,000 to 5,000	20.00
Membership of 5,000 to 10,000	25.00

Membership of 10,000 to 15,000.....	30.00
Membership of 15,000 to 20,000.....	35.00
Membership of 20,000 to 25,000.....	40.00
Membership of 25,000 to 30,000.....	45.00
Membership of 30,000 or more	50.00

(1943, c. 60, s. 2; 1973, c. 476, s. 193; 2016-5, s. 1.1(a).)

§ 105-122. (Effective for taxable years beginning before January 1, 2017) Franchise or privilege tax on domestic and foreign corporations.

(a) An annual franchise or privilege tax is imposed on a corporation doing business in this State. The tax is determined on the basis of the books and records of the corporation as of the close of its income year. A corporation subject to the tax must file a return under affirmation with the Secretary at the place and in the manner prescribed by the Secretary. The return must be signed by the president, vice-president, treasurer, or chief financial officer of the corporation. The return is due on or before the fifteenth day of the fourth month following the end of the corporation's income year.

(b) Determination of Capital Base. – A corporation taxed under this section shall determine the total amount of its issued and outstanding capital stock, surplus, and undivided profits. No reservation or allocation from surplus or undivided profits is allowed except as provided below:

- (1) Definite and accrued legal liabilities.
 - (1a) Billings in excess of costs that are considered a deferred liability under the percentage of completion method of revenue recognition.
- (2) Taxes accrued, dividends declared, and reserves for depreciation of tangible assets and for amortization of intangible assets as permitted for income tax purposes.
- (3) When including deferred tax liabilities, a corporation may reduce the amount included in its base by netting against that amount deferred tax assets. The reduction may not decrease deferred tax liabilities below zero (0).
- (4) Reserves for the cost of any air-cleaning device or sewage or waste treatment plant, including waste lagoons, and pollution abatement equipment purchased or constructed and installed which reduces the amount of air or water pollution resulting from the emission of air contaminants or the discharge of sewage and industrial wastes or other polluting materials or substances into the outdoor atmosphere or streams, lakes, or rivers, upon condition that the corporation claiming such deductible liability shall furnish to the Secretary a certificate from the Department of Environmental Quality or from a local air pollution control program for air-cleaning devices located in an area where the Environmental Management Commission has certified a local air pollution control program pursuant to G.S. 143-215.112 certifying that the Environmental Management Commission or local air pollution control program has found as a fact that the air-cleaning device, waste treatment plant or pollution abatement equipment purchased or constructed and installed as above described has actually been constructed and installed and that such plant or equipment complies with the requirements of the Environmental Management Commission or local air pollution control program with respect to such devices, plants or equipment, that such device, plant or equipment is being effectively

operated in accordance with the terms and conditions set forth in the permit, certificate of approval, or other document of approval issued by the Environmental Management Commission or local air pollution control program and that the primary purpose thereof is to reduce air or water pollution resulting from the emission of air contaminants or the discharge of sewage and waste and not merely incidental to other purposes and functions.

- (5) Reserves for the cost of purchasing and installing equipment or constructing facilities for the purpose of recycling or resource recovering of or from solid waste or for the purpose of reducing the volume of hazardous waste generated shall be treated as deductible for the purposes of this section upon condition that the corporation claiming such deductible liability shall furnish to the Secretary a certificate from the Department of Environmental Quality certifying that the Department of Environmental Quality has found as a fact that the equipment or facility has actually been purchased, installed or constructed, that it is in conformance with all rules and regulations of the Department of Environmental Quality, and the recycling or resource recovering is the primary purpose of the facility or equipment.
- (6) Reserves for the cost of constructing facilities of any private or public utility built for the purpose of providing sewer service to residential and outlying areas shall be treated as deductible for the purposes of this section; the deductible liability allowed by this section shall apply only with respect to such pollution abatement plants or equipment constructed or installed on or after January 1, 1955.
- (7) The cost of treasury stock.
- (8) In the case of an international banking facility, the capital base shall be reduced by the excess of the amount as of the end of the taxable year of all assets of an international banking facility which are employed outside the United States over liabilities of the international banking facility owed to foreign persons. For purposes of such reduction, foreign persons shall have the same meaning as defined in G.S. 105-130.5(b)(13)d.

Every corporation doing business in this State which is a parent, subsidiary, or affiliate of another corporation shall add to its capital stock, surplus, and undivided profits all indebtedness owed to a parent, subsidiary, or affiliated corporation as a part of its capital used in its business and as a part of the base for franchise tax under this section. If any part of the capital of the creditor corporation is capital borrowed from a source other than a parent, subsidiary, or affiliate, the debtor corporation, which is required under this subsection to include in its tax base the amount of debt by reason of being a parent, subsidiary, or affiliate of the creditor corporation, may deduct from the debt included a proportionate part determined on the basis of the ratio of the borrowed capital of the creditor corporation to the total assets of the creditor corporation. If the creditor corporation is also taxable under the provisions of this section, the creditor corporation is allowed to deduct from the total of its capital, surplus, and undivided profits the amount of any debt owed to it by a parent, subsidiary or affiliated corporation to the extent that the debt has been included in the tax base of the parent, subsidiary, or affiliated debtor corporation reporting for taxation under the provisions of this section.

(b1) Definitions. – The following definitions apply in subsection (b) of this section:

- (1) Affiliate. – The same meaning as specified in G.S. 105-130.2.

- (2) Indebtedness. – All loans, credits, goods, supplies, or other capital of whatsoever nature furnished by a parent, subsidiary, or affiliated corporation, other than indebtedness endorsed, guaranteed, or otherwise supported by one of these corporations.
- (3) Parent. – The same meaning as specified in G.S. 105-130.2.
- (4) Subsidiary. – The same meaning as specified in G.S. 105-130.2.
- (c) Repealed by Session Laws 2007-491, s. 2, effective January 1, 2008.
- (c1) Apportionment. – A corporation that is doing business in this State and in one or more other states must apportion its capital stock, surplus, and undivided profits to this State. A corporation must use the apportionment method set out in subdivision (1) of this subsection unless the Department has authorized it to use a different method under subdivision (2) of this subsection. The portion of a corporation's capital stock, surplus, and undivided profits determined by applying the appropriate apportionment method is considered the amount of capital stock, surplus, and undivided profits the corporation uses in its business in this State.
 - (1) Statutory. – A corporation that is subject to income tax under Article 4 of this Chapter must apportion its capital stock, surplus, and undivided profits by using the fraction it applies in apportioning its income under that Article. A corporation that is not subject to income tax under Article 4 of this Chapter must apportion its capital stock, surplus, and undivided profits by using the fraction it would be required to apply in apportioning its income if it were subject to that Article. The apportionment method set out in this subdivision is considered the statutory method of apportionment and is presumed to be the best method of determining the amount of a corporation's capital stock, surplus, and undivided profits attributable to the corporation's business in this State.
 - (2) Alternative. – corporation that believes the statutory apportionment method set out in subdivision (1) of this subsection subjects a greater portion of its capital stock, surplus, and undivided profits to tax under this section than is attributable to its business in this State may make a written request to the Secretary for permission to use an alternative method. The request must set out the reasons for the corporation's belief and propose an alternative method. The corporation has the burden of establishing by clear, cogent, and convincing proof that the statutory apportionment method subjects a greater portion of the corporation's capital stock, surplus, and undivided profits to tax under this section than is attributable to its business in this State and that the proposed alternative method is a better method of determining the amount of the corporation's capital stock, surplus, and undivided profits attributable to the corporation's business in this State.

The Secretary must issue a written decision on a corporation's request for an alternative apportionment method. If the decision grants the request, it must describe the alternative method the corporation is authorized to use and state the tax years to which the alternative method applies. A decision may apply to no more than three tax years. A corporation may renew a request to use an alternative apportionment method by following the procedure in this subdivision. A decision of the Secretary on a request for an alternative apportionment method is final and is not subject to administrative or judicial review. A corporation authorized to use an alternative method may apportion

its capital stock, surplus, and undivided profits in accordance with the alternative method or the statutory method.

(3) Repealed by Session Laws 2011-330, s. 5, effective June 27, 2011.

(d) After determining the proportion of its total capital stock, surplus and undivided profits as set out in subsection (c1) of this section, which amount shall not be less than fifty-five percent (55%) of the appraised value as determined for ad valorem taxation of all the real and tangible personal property in this State of each corporation nor less than its total actual investment in tangible property in this State, every corporation taxed under this section shall annually pay to the Secretary of Revenue, at the time the return is due, a franchise or privilege tax at the rate of one dollar and fifty cents (\$1.50) per one thousand dollars (\$1,000) of the total amount of capital stock, surplus and undivided profits as provided in this section. The tax imposed in this section shall not be less than thirty-five dollars (\$35.00) and is for the privilege of carrying on, doing business, and/or the continuance of articles of incorporation or domestication of each corporation in this State. Appraised value of tangible property including real estate is the ad valorem valuation for the calendar year next preceding the due date of the franchise tax return. The term "total actual investment in tangible property" as used in this section means the total original purchase price or consideration to the reporting taxpayer of its tangible properties, including real estate, in this State plus additions and improvements thereto less reserve for depreciation as permitted for income tax purposes, and also less any indebtedness incurred and existing by virtue of the purchase of any real estate and any permanent improvements made thereon. In computing "total actual investment in tangible personal property" a corporation may deduct reserves for the entire cost of any air-cleaning device or sewage or waste treatment plant, including waste lagoons, and pollution abatement equipment purchased or constructed and installed which reduces the amount of air or water pollution resulting from the emission of air contaminants or the discharge of sewage and industrial wastes or other polluting materials or substances into the outdoor atmosphere or into streams, lakes, or rivers, upon condition that the corporation claiming this deduction shall furnish to the Secretary a certificate from the Department of Environmental Quality or from a local air pollution control program for air-cleaning devices located in an area where the Environmental Management Commission has certified a local air pollution control program pursuant to G.S. 143-215.112 certifying that said Department or local air pollution control program has found as a fact that the air-cleaning device, waste treatment plant or pollution abatement equipment purchased or constructed and installed as above described has actually been constructed and installed and that the device, plant or equipment complies with the requirements of the Environmental Management Commission or local air pollution control program with respect to the devices, plants or equipment, that the device, plant or equipment is being effectively operated in accordance with the terms and conditions set forth in the permit, certificate of approval, or other document of approval issued by the Environmental Management Commission or local air pollution control program and that the primary purpose is to reduce air or water pollution resulting from the emission of air contaminants or the discharge of sewage and waste and not merely incidental to other purposes and functions. The cost of constructing facilities of any private or public utility built for the purpose of providing sewer service to residential and outlying areas is treated as deductible for the purposes of this section; the deductible liability allowed by this section applies only with respect to pollution abatement plants or equipment constructed or installed on or after January 1, 1955.

(d1) Credits. – A corporation is allowed a credit against the tax imposed by this section for a taxable year equal to one-half of the amount of tax payable during the taxable year under Article

5E of this Chapter. The credit allowed by this subsection may not exceed the amount of tax imposed by this section for the taxable year, reduced by the sum of all other credits allowed against that tax, except tax payments made by or on behalf of the taxpayer.

(e) Any corporation which changes its income year, and files a "short period" income tax return pursuant to G.S. 105-130.15 shall file a franchise tax return in accordance with the provisions of this section in the manner and as of the date specified in subsection (a) of this section. Such corporation shall be entitled to deduct from the total franchise tax computed (on an annual basis) on such return the amount of franchise tax previously paid which is applicable to the period subsequent to the beginning of the new income year.

(f) The return and tax required by this section are in addition to all other reports required or taxes levied and assessed in this State.

(g) Counties, cities and towns shall not levy a franchise tax on corporations taxed under this section.

(h) Repealed by Session Laws 1981 (Regular Session, 1982), c. 1211, s. 5. (1939, c. 158, s. 210; 1941, c. 50, s. 4; 1943, c. 400, s. 3; 1945, c. 708, s. 3; 1947, c. 501, s. 3; 1951, c. 643, s. 3; 1953, c. 1302, s. 3; 1955, c. 1100, s. 2½; c. 1350, s. 17; 1957, c. 1340, s. 3; 1959, c. 1259, s. 3; 1963, c. 1169, s. 1; 1967, c. 286; c. 892, ss. 10, 11; c. 1110, s. 2; 1973, c. 476, s. 193; c. 695, s. 17; c. 1262, s. 23; c. 1287, s. 3; 1975, c. 764, s. 2; 1977, c. 771, s. 4; 1981, c. 704, s. 18; c. 855, s. 3; 1981 (Reg. Sess., 1982), c. 1211, s. 5; 1985, c. 656, s. 40; 1985 (Reg. Sess., 1986), c. 826, s. 6; c. 854, s. 1; 1987 (Reg. Sess., 1988), c. 882, s. 4.3; 1989, c. 148, s. 1; c. 727, ss. 218(39), 219(27); 1991, c. 30, s. 5; 1993, c. 532, s. 11; 1995 (Reg. Sess., 1996), c. 560, s. 1; 1997-443, s. 11A.119(a); 1998-22, ss. 8, 9; 1998-98, ss. 72, 77; 1998-217, s. 43; 1999-337, s. 21; 2001-427, s. 12(a); 2003-416, s. 5(j); 2006-95, s. 1.1; 2006-162, s. 2; 2007-491, ss. 2, 10, 11; 2008-134, ss. 3(a), (b); 2009-422, s. 1; 2009-445, s. 2; 2010-31, s. 31.9(a); 2010-89, s. 2(c); 2011-145, s. 31A.2(a); 2011-330, s. 5; 2012-79, s. 1.14(a); 2013-414, ss. 1(c), 2(a); 2015-241, s. 14.30(u).)

§ 105-122. (Effective for taxable years beginning on or after January 1, 2017, and applicable to the calculation of franchise tax reported on the 2016 and later corporate income tax return) Franchise or privilege tax on domestic and foreign corporations.

(a) Tax Imposed. – An annual franchise or privilege tax is imposed on a corporation doing business in this State for the privilege of doing business in this State and for the continuance of articles of incorporation or domestication of each corporation in this State. A corporation subject to the tax must file a return under affirmation with the Secretary at the place and in the manner prescribed by the Secretary. The return must be signed by the president, vice-president, treasurer, or chief financial officer of the corporation. The return is due on or before the fifteenth day of the fourth month following the end of the corporation's income year.

(b) Determination of Net Worth. – A corporation taxed under this section shall determine the total amount of its net worth on the basis of the books and records of the corporation as of the close of its income year. The net worth of a corporation is its total assets without regard to the deduction for accumulated depreciation, depletion, or amortization less its total liabilities, computed in accordance with generally accepted accounting principles as of the end of the corporation's taxable year. If the corporation does not maintain its books and records in accordance with generally accepted accounting principles, then its net worth is computed in accordance with the accounting method used by the entity for federal tax purposes. A corporation's net worth is subject to the following adjustments:

- (1) A deduction for accumulated depreciation, depletion, and amortization as determined in accordance with the method used for federal tax purposes.
- (1a) Repealed by Session Laws 2015-241, s. 32.15(d), effective for taxable years beginning on or after January 1, 2017, and applicable to the calculation of franchise tax reported on the 2016 and later corporate income tax return.
- (1b) Assets for which a deduction is allowed under subdivision (1) of this subsection are valued in accordance with the method used in computing depreciation, depletion, and amortization for federal income tax purposes.
- (2) An addition for indebtedness the corporation owes to a parent, a subsidiary, an affiliate, or a noncorporate entity in which the corporation or an affiliated group of corporations owns directly or indirectly more than fifty percent (50%) of the capital interests of the noncorporate entity. The amount added back to the corporation's net worth may be further adjusted if part of the capital of the creditor is capital borrowed from a source other than a parent, a subsidiary, or an affiliate. The debtor corporation may deduct a proportionate part of the indebtedness based on the ratio of the borrowed capital of the creditor to the total assets of the creditor. For purposes of this subdivision, borrowed capital does not include indebtedness incurred by a bank arising out of the receipt of a deposit and evidenced by a certificate of deposit, a passbook, a cashier's check, a certified check, or other similar document.
- (2a) If the creditor corporation is taxable under this Article, the creditor corporation may deduct the amount of indebtedness owed to it by a parent, subsidiary, or affiliated corporation to the extent that such indebtedness has been added by the debtor corporation.
- (3) Repealed by Session Laws 2018-5, s. 38.2(b), effective beginning on or after January 1, 2019, and applicable to the calculation of franchise tax reported on the 2018 and later corporate income tax return.
- (4) through (8) Repealed by Session Laws 2015-241, s. 32.15(c), effective for taxable years beginning on or after January 1, 2017, and applicable to the calculation of franchise tax reported on the 2016 and later corporate income tax return.
- (b1) Definitions. – The following definitions apply in subsection (b) of this section:
 - (1) Affiliate. – A corporation is an affiliate of another corporation when both are directly or indirectly controlled by the same parent corporation or by the same or associated financial interests by stock ownership, interlocking directors, or by any other means whatsoever, whether the control is direct or through one or more subsidiary, affiliated, or controlled corporations.
 - (2) Affiliated group. – The same meaning as defined in G.S. 105-114.1.
 - (3) Capital interest. – The right under an entity's governing law to receive a percentage of the entity's assets upon dissolution after payments to creditors.
 - (4) Governing law. – The law under which the noncorporate entity is organized.
 - (5) Indebtedness. – All loans, credits, goods, supplies, or other capital of whatsoever nature furnished by a parent, a subsidiary, an affiliate, or a noncorporate entity in which the corporation or an affiliated group of corporations owns directly or indirectly more than fifty percent (50%) of the

capital interests of the noncorporate entity, other than indebtedness endorsed, guaranteed, or otherwise supported by one of these corporations.

- (6) Noncorporate entity. – A person that is neither a human being nor a corporation.
- (7) Parent. – A corporation is a parent of another corporation when, directly or indirectly, it controls the other corporation by stock ownership, interlocking directors, or by any other means whatsoever exercised by the same or associated financial interests, whether the control is direct or through one or more subsidiary, affiliated, or controlled corporations.
- (8) Subsidiary. – A corporation is a subsidiary of another corporation when, directly or indirectly, it is subject to control by the other corporation by stock ownership, interlocking directors, or by any other means whatsoever exercised by the same or associated financial interest, whether the control is direct or through one or more subsidiary, affiliated, or controlled corporations.

(c1) Apportionment. – A corporation that is doing business in this State and in one or more other states must apportion its net worth to this State. A corporation must use the apportionment method set out in subdivision (1) of this subsection unless the Department has authorized it to use a different method under subdivision (2) of this subsection. The portion of a corporation's net worth determined by applying the appropriate apportionment method is considered the amount of net worth the corporation uses in its business in this State:

- (1) Statutory. – A corporation that is subject to income tax under Article 4 of this Chapter must apportion its net worth by using the fraction it applies in apportioning its income under that Article. A corporation that is not subject to income tax under Article 4 of this Chapter must apportion its net worth by using the fraction it would be required to apply in apportioning its income if it were subject to that Article. The apportionment method set out in this subdivision is considered the statutory method of apportionment and is presumed to be the best method of determining the amount of a corporation's net worth attributable to the corporation's business in this State.
- (2) Alternative. – A corporation that believes the statutory apportionment method set out in subdivision (1) of this subsection subjects a greater portion of its net worth to tax under this section than is attributable to its business in this State may make a written request to the Secretary for permission to use an alternative method. The request must set out the reasons for the corporation's belief and propose an alternative method. The corporation has the burden of establishing by clear, cogent, and convincing proof that the statutory apportionment method subjects a greater portion of the corporation's net worth to tax under this section than is attributable to its business in this State and that the proposed alternative method is a better method of determining the amount of the corporation's net worth attributable to the corporation's business in this State.

The Secretary must issue a written decision on a corporation's request for an alternative apportionment method. If the decision grants the request, it must describe the alternative method the corporation is authorized to use and state the tax years to which the alternative method applies. A decision may apply to no more than three tax years. A corporation may renew a request to use an alternative apportionment method by following the procedure in this subdivision. A decision of the Secretary on a request for an alternative

apportionment method is final and is not subject to administrative or judicial review. A corporation authorized to use an alternative method may apportion its net worth in accordance with the alternative method or the statutory method.

- (3) Repealed by Session Laws 2011-330, s. 5, effective June 27, 2011.
- (d) Tax Base. – A corporation's tax base is the greatest of the following:
 - (1) The proportion of its net worth as set out in subsection (c1) of this section.
 - (2) Fifty-five percent (55%) of the corporation's appraised value as determined for ad valorem taxation of all the real and tangible personal property in this State. For purposes of this subdivision, the appraised value of tangible property, including real estate, is the ad valorem valuation for the calendar year next preceding the due date of the franchise tax return.
 - (3) **(Effective for taxable years beginning before January 1, 2020)** The corporation's total actual investment in tangible property in this State. For purposes of this subdivision, the total actual investment in tangible property in this State is the total original purchase price or consideration to the reporting taxpayer of its tangible properties, including real estate, in this State plus additions and improvements thereto less reserve for depreciation as permitted for income tax purposes.
 - (3) **(Effective for taxable years beginning on or after January 1, 2020, and applicable to the calculation of franchise tax reported on the 2019 and later corporate income tax returns)** The corporation's total actual investment in tangible property in this State. For purposes of this subdivision, the total actual investment in tangible property in this State is the total original purchase price or consideration to the reporting taxpayer of its tangible properties, including real estate, in this State plus additions and improvements thereto less (i) reserve for depreciation as permitted for income tax purposes and (ii) any indebtedness specifically incurred and existing solely for and as the result of the purchase of any real estate and any permanent improvements made on the real estate.
- (d1) Repealed by Session Laws 2015-241, s. 32.15(c), effective for taxable years beginning on or after January 1, 2017, and applicable to the calculation of franchise tax reported on the 2016 and later corporate income tax return.
- (d2) **(Effective for taxable years beginning before January 1, 2019)** Tax Rate. – The tax rate is one dollar and fifty cents (\$1.50) per one thousand dollars (\$1,000) of the corporation's tax base as determined under subsection (d) of this section. The tax imposed in this section shall not be less than two hundred dollars (\$200.00).
- (d2) **(Effective for taxable years beginning on or after January 1, 2019, and applicable to the calculation of franchise tax reported on the 2018 and later corporate income tax returns)** Tax Rate. – For a C Corporation, as defined in G.S. 105-130.2, [the] tax rate is one dollar and fifty cents (\$1.50) per one thousand dollars (\$1,000) of the corporation's tax base as determined under subsection (d) of this section. For an S Corporation, as defined in G.S. 105-130.2, the tax rate is two hundred dollars (\$200.00) for the first one million dollars (\$1,000,000) of the corporation's tax base as determined under subsection (d) of this section and one dollar and fifty cents (\$1.50) per one thousand dollars (\$1,000) of its tax base that exceeds one million dollars (\$1,000,000). In no event may the tax imposed by this section be less than two hundred dollars (\$200.00).

(e) Short Period. – Any corporation which changes its income year, and files a "short period" income tax return pursuant to G.S. 105-130.15 shall file a franchise tax return in accordance with the provisions of this section in the manner and as of the date specified in subsection (a) of this section. Such corporation shall be entitled to deduct from the total franchise tax computed (on an annual basis) on such return the amount of franchise tax previously paid which is applicable to the period subsequent to the beginning of the new income year.

(f) Return and Tax. – The return and tax required by this section are in addition to all other reports required or taxes levied and assessed in this State.

(g) Local Prohibition. – Counties, cities and towns shall not levy a franchise tax on corporations taxed under this section.

(h) Repealed by Session Laws 1981 (Regular Session, 1982), c. 1211, s. 5. (1939, c. 158, s. 210; 1941, c. 50, s. 4; 1943, c. 400, s. 3; 1945, c. 708, s. 3; 1947, c. 501, s. 3; 1951, c. 643, s. 3; 1953, c. 1302, s. 3; 1955, c. 1100, s. 2½; c. 1350, s. 17; 1957, c. 1340, s. 3; 1959, c. 1259, s. 3; 1963, c. 1169, s. 1; 1967, c. 286; c. 892, ss. 10, 11; c. 1110, s. 2; 1973, c. 476, s. 193; c. 695, s. 17; c. 1262, s. 23; c. 1287, s. 3; 1975, c. 764, s. 2; 1977, c. 771, s. 4; 1981, c. 704, s. 18; c. 855, s. 3; 1981 (Reg. Sess., 1982), c. 1211, s. 5; 1985, c. 656, s. 40; 1985 (Reg. Sess., 1986), c. 826, s. 6; c. 854, s. 1; 1987 (Reg. Sess., 1988), c. 882, s. 4.3; 1989, c. 148, s. 1; c. 727, ss. 218(39), 219(27); 1991, c. 30, s. 5; 1993, c. 532, s. 11; 1995 (Reg. Sess., 1996), c. 560, s. 1; 1997-443, s. 11A.119(a); 1998-22, ss. 8, 9; 1998-98, ss. 72, 77; 1998-217, s. 43; 1999-337, s. 21; 2001-427, s. 12(a); 2003-416, s. 5(j); 2006-95, s. 1.1; 2006-162, s. 2; 2007-491, ss. 2, 10, 11; 2008-134, ss. 3(a), (b); 2009-422, s. 1; 2009-445, s. 2; 2010-31, s. 31.9(a); 2010-89, s. 2(c); 2011-145, s. 31A.2(a); 2011-330, s. 5; 2012-79, s. 1.14(a); 2013-414, ss. 1(c), 2(a); 2015-241, ss. 14.30(c), (u), 32.15(c), (d); 2015-268, s. 10.1(a); 2016-5, ss. 1.7(a), (b); 2017-39, s. 2; 2017-57, s. 38.6(a); 2017-204, ss. 1.3(a)-(c); 2018-5, s. 38.2(b).)

§ 105-122.1. Credit for additional annual report fees paid by limited liability companies subject to franchise tax.

A limited liability company subject to tax under this Article is allowed a credit against the tax imposed by this Article equal to the difference between the annual report fee for corporations under G.S. 55-1-22(a)(23) and the annual report fee for limited liability companies under G.S. 57D-1-22. The credit allowed by this section may not exceed the amount of tax imposed by this Article for the taxable year reduced by the sum of all credits allowed, except payments of tax made by or on behalf of the taxpayer. (2006-66, s. 24A.2(c); 2007-323, s. 30.6(b); 2013-157, s. 26.)

§ 105-123: Repealed by Session Laws 1991, c. 30, s. 1.

§ 105-124. Repealed by Session Laws 1959, c. 1259, s. 9.

§ 105-125. Exempt corporations.

(a) Exemptions. – The following corporations are exempt from the taxes levied by this Article. Upon request of the Secretary, an exempt corporation must establish its claim for exemption in writing:

- (1) A charitable, religious, fraternal, benevolent, scientific, or educational corporation not operated for profit.
- (2) An insurance company subject to tax under Article 8B of this Chapter.

- (3) A mutual ditch or irrigation association, a mutual or cooperative telephone association or company, a mutual canning association, a cooperative breeding association, or a similar corporation of a purely local character deriving receipts solely from assessments, dues, or fees collected from members for the sole purpose of meeting expenses.
- (4) A cooperative marketing association that operates solely for the purpose of marketing the products of members or other farmers and returns to the members and farmers the proceeds of sales, less the association's necessary operating expenses, including interest and dividends on capital stock, on the basis of the quantity of product furnished by them. The association's operations may include activities directly related to these marketing activities.
- (5) A production credit association organized under the federal Farm Credit Act of 1933.
- (6) A club organized and operated exclusively for pleasure, recreation, or other nonprofit purposes, a civic league operated exclusively for the promotion of social welfare, a business league, or a board of trade.
- (7) A chamber of commerce or merchants' association not organized for profit, no part of the net earnings of which inures to the benefit of a private stockholder, an individual, or another corporation.
- (8) An organization, such as a condominium association, a homeowners' association, or a cooperative housing corporation not organized for profit, the membership of which is limited to the owners or occupants of residential units in the condominium, housing development, or cooperative housing corporation. To qualify for the exemption, the organization must be operated exclusively for the management, operation, preservation, maintenance, or landscaping of the residential units owned by the organization or its members or of the common areas and facilities that are contiguous to the residential units and owned by the organization or by its members. To qualify for the exemption, no part of the net earnings of the organization may inure, other than through the performance of related services for the members of the organization, to the benefit of any person.
- (9) Except as otherwise provided by law, an organization exempt from federal income tax under the Code.

Provided, that an entity that qualifies as a real estate mortgage investment conduit, as defined in section 860D of the Code, is exempt from all of the taxes levied in this Article. Upon request by the Secretary of Revenue, a real estate mortgage investment conduit must establish in writing its qualification for this exemption.

(b) **(Effective for taxable years beginning before January 1, 2017)** Certain Investment Companies. – A corporation doing business in North Carolina that meets one or more of the following conditions may, in determining its capital stock, surplus, and undivided profits base for franchise tax, deduct the aggregate market value of its investments in the stocks, bonds, debentures, or other securities or evidences of debt of other corporations, partnerships, individuals, municipalities, governmental agencies, or governments:

- (1) A regulated investment company. – A regulated investment company is an entity that qualifies as a regulated investment company under section 851 of the Code.

- (2) A REIT, unless the REIT is a captive REIT. – The terms "REIT" and "captive REIT" have the same meanings as defined in G.S. 105-130.12.

(b) **(Effective for taxable years beginning on or after January 1, 2017, and applicable to the calculation of franchise tax reported on the 2016 and later corporate income tax return)** Certain Investment Companies. – A corporation doing business in North Carolina that meets one or more of the following conditions may, in determining its net worth base for franchise tax, deduct the aggregate market value of its investments in the stocks, bonds, debentures, or other securities or evidences of debt of other corporations, partnerships, individuals, municipalities, governmental agencies, or governments:

- (1) A regulated investment company. – A regulated investment company is an entity that qualifies as a regulated investment company under section 851 of the Code.
- (2) A REIT, unless the REIT is a captive REIT. – The terms "REIT" and "captive REIT" have the same meanings as defined in G.S. 105-130.12. (1939, c. 158, s. 213; 1951, c. 937, s. 3; 1955, c. 1313, s. 1; 1957, c. 1340, s. 3; 1963, c. 601, s. 3; c. 1169, s. 1; 1967, c. 1110, s. 2; 1971, c. 820, s. 3; c. 833, s. 1; 1973, c. 476, s. 193; c. 1053, s. 2; c. 1287, s. 3; 1975, c. 591, s. 1; 1983, c. 28, s. 2; c. 713, s. 67; 1985 (Reg. Sess., 1986), c. 826, s. 4; 1991, c. 30, s. 6; 1993, c. 485, s. 4; c. 494, s. 1; 2008-107, s. 28.7(c); 2011-330, s. 8; 2015-241, s. 32.15(f); 2016-5, s. 1.7(a).)

§ 105-126. Repealed by Session Laws 1959, c. 1259, s. 9.

§ 105-127. When franchise or privilege taxes payable.

(a) Every corporation, domestic or foreign, that is required to file a return with the Secretary shall, unless otherwise provided, pay annually the franchise tax as required by G.S. 105-122.

(b) Repealed by Session Laws 1998-98, s. 78, effective August 14, 1998.

(c) It shall be the duty of the treasurer or other officer having charge of any such corporation, domestic or foreign, upon which a tax is herein imposed, to transmit the amount of the tax due to the Secretary of Revenue within the time provided by law for payment of same.

(d), (e) Repealed by Session Laws 2002-72, s. 11, effective August 12, 2002.

(f) After the end of the income year in which a domestic corporation is dissolved pursuant to Part 1 of Article 14 of Chapter 55 of the General Statutes, the corporation is no longer subject to the tax levied in this Article unless the Secretary of Revenue finds that the corporation has engaged in business activities in this State not appropriate to winding up and liquidating its business and affairs. (1939, c. 158, s. 215; 1973, c. 476, s. 193; 1991, c. 30, s. 7; 1993, c. 485, s. 6; 1998-98, s. 78; 2002-72, s. 11; 2011-330, s. 9; 2013-414, s. 1(d).)

§ 105-128. Power of attorney.

The Secretary of Revenue shall have the authority to require a proper power of attorney of each and every agent for any taxpayer under this Article. (1939, c. 158, s. 217; 1973, c. 476, s. 193.)

§ 105-129. Extension of time for filing returns.

A return required by this Article is due on or before the date set in this Article. A taxpayer may ask the Secretary for an extension of time to file a return under G.S. 105-263. (1939, c. 158, s. 216;

1955, c. 1350, s. 17; 1959, c. 1259, s. 9; 1973, c. 476, s. 193; 1977, c. 1114, s. 6; 1989 (Reg. Sess., 1990), c. 984, s. 7; 1997-300, s. 2.)

§ 105-129.1: Repealed by Session Laws 1989, c. 582, s. 1.